IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 1051 (S/S) of 2003

Durga Singh Chauhan …. Petitioner

Versus

Principal/Chief Secretary
Panchayat Raj Vibhag
Uttaranchal Shasan
Dehradun & others …. Respondents

Hon'ble M.M. Ghildiyal, J.

By means of this petition, the petitioner has challenged the order dated 04.09.2003 passed by respondent no. 1 by which the respondent no. 4 was posted as Engineer, Zila Panchayat on deputation for a period of three years or until further order of the Government whichever is earlier.

Heard Sri V.K. Bist learned counsel for the petitioner, learned Standing Counsel, Sri U.P.S. Negi learned Additional Advocate General for the State of Uttaranchal and Sri V.B.S. Negi learned counsel for the respondent no.4.

Brief facts of the case are that the petitioner was appointed as Jr. Engineer and was posted as Zila Panchayat, Uttarkashi. During his tenure when he was posted at Zila Panchayat, Dehradun, he was given charge of Officiating Engineer of Zila Panchayat, Dheradun in December 2002.

The petitioner was transferred to Zila Panchayat, Uttarkashi and at the relevant time when the petition was filed he was officiating as Engineer, Zila Panchayat, Uttarkashi. However, by the impugned order the respondent no. 4 has been posted as Engineer, Zila Panchayat, Uttarkashi on deputation and since the petitioner was officiating as Engineer Zila Panchayat, Uttarkashi, therefore aggrieved by the impugned order, the petitioner has filed this writ petition.

Learned counsel for the petitioner has challenged the impugned order on two grounds, firstly that the order was passed in violation of section 41 of U.P. Kshettra Panchayat & Zila Panchayat Adhiniyam, 1961, which provides that subject to any Rules made in this behalf, the State Government may, at the request of Zila Panchayat and for such time and on such terms, as may be agreed, to place at the disposal of the Zila Panchayat the services of any of its servants…….

The petitioner has submitted that there was no request on behalf of Zila Panchayat to send Engineer on deputation to Zila Panchayat, Uttarkashi and as such, the impugned order is in violation of section 41 of the Act.

Learned counsel for the respondents have drawn my attention to a letter date 17.07.2003 sent by Adhyaksh, Zila Panchayat, Uttarkashi addressed to the Minister, a copy of which was also sent to the Secretary Panchayatiraj Vibhag in which it is categorically stated that Zila Panchayat, Uttarkashi is facing shortage of Engineers and requested the Government to send at least one Engineer and two Jr. Engineer so that the work may not suffer.

Learned counsel for the respondents have submitted that on the request of Zila Panchayat when the respondent no. 4 was posted as Engineer on deputation for a period of three years or until further orders of the Government whichever was earlier as such, there is no violation of Rule 41 of the Act, as such. I find force in the submission made by learned counsel for the respondents.

The second submission raised by the petitioner is that the Government has issued order dated 02.11.1998 and 04.01.2000 wherein it is specifically stated that any work of the Zila Panchayat should be got done by the employees of Zila Panchayat and not from outside. He has submitted that after the posting of respondent no. 4 as Engineer in Zila Panchayat even on deputation, the work is being done by him which is against the spirit of the aforesaid GOs.

After the posting of respondent no. 4 on deputation in Zila Panchayat, Uttarkashi he is not an outside and if any work is being

executed by him that cannot be said that the work is being done by the outside.

I do not find force in the submission of the learned counsel for the petitioner.

Learned counsel for the respondents has submitted that the petitioner was never appointed as a Engineer and he is working as a Jr. Engineer. He is not at all affected by the posting of respondent no. 4 on deputation as a Engineer, Zila Panchyat, Uttarkashi.

Learned counsel for the respondent has further submitted that the petitioner was never promoted to the post of Engineer Zila Panchayat, Uttarkahsi. The petitioner was Officiating as a Stop-gap arrangements. The respondents has placed reliance on the judgment of Hon'ble Apex Court in the case reported in **AIR 1991 Supreme Court 1145, Ramakant Shripa Sinai Advalpaldar Vs. Union of India and others.** The same is quoted below:-

> *"Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get a salary of the higher post, but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement."*
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> In para 6, the Apex Court has held as under:-
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> *"The third contention is that appellant's 'in charge' arrangements in the higher post had continued for so long a period that a determination of equivalence on the basis of his lower substantive post would become arbitrary. This contention ignores the fact that an 'in charge' arrangement is not a recognition of or is necessarily based on seniority and*

that, therefore, no rights, equities or expectations could be built upon it. The third contention is also unmeritorious."

I find force in the submission of learned counsel for the respondent. The petitioner cannot claim any right, equities or expectations only on the basis of 'In charge' arrangements. Mere continuance of higher post on the basis of 'In charge' arrangements cannot be treated to be recognition and the petitioner who was only asked to look after the work cannot claim any right for continuance on the said arrangements.

In view of the aforesaid findings the writ petitioner is dismissed. No order as to costs.

29 May, 2004
ASWAL